THE HONOURABLE SRI JUSTICE N. V. RAMANA

WRIT PETITON NO. 19998 OF 2001

DATED: 26-10-2006

BETWEEN:

The Commissioner,
Pithapuram Municipality,
Pithapuram, East Godavari District …
Petitioner

And

Peethala Kasulabbayi,
S/o. Appa Rao, Srungavaram,
Sankhavaram Mandal,
East Godavari District and another …Respondents

THE HONOURABLE SRI JUSTICE N.V. RAMANA

WRIT PETITON NO. 19998 OF 2001

ORDER:

Assailing the award, dated 17.04.1998 passed by the Labour Court, Visakhapatnam, in I.D. No. 11 of 1997, directing the petitioner-Municipality to reinstate respondent No.1 into service with continuity of service and back wages, the petitioner-Municipality filed the present writ petition.

Heard the learned Standing Counsel for the petitioner-Municipality and the learned counsel for respondent No.1.

Learned Standing Counsel for the petitioner-Municipality contends that the Labour Court, without giving sufficient opportunity to the petitioner-Municipality to contest the matter and without properly appreciating the material on record, erroneously passed the impugned award directing the petitioner-Municipality to reinstate respondent No.1 into service with continuity of service and back wages. He further contends that respondent No.1 failed to submit satisfactory explanation for the delay of 9 years in

approaching the Labour Court and as there is no material to satisfy that respondent No.1 was not gainfully employed during the period of 9 years, the Labour Court erred in granting continuity of service and back wages. He, thus, prayed that the impugned award be set aside and the writ petition be allowed.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the fact of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

Before the labour Court, respondent No.1-Workman was examined as WW.1 and got marked Exs.W1 and W2 documents. Though notice was served, the petitioner-Management did not choose to contest the matter either by filing counter affidavit or by leading evidence. As per the claim of the workman, he joined in petitioner-Municipality as N.M.R. on 10.02.1985 and he worked as such till 31.08.1988, on which date the Management retrenched him from service through oral orders. The documents Exs.W1 and W2 corroborate the version of respondent No.1. Ex.W1 the service certificate, dated 03.02.1989 shows that respondent No.1 worked 276 days in the year 1986. The Management did not appear and produce any material to rebut the same. The Labour Court, after an elaborate consideration of the entire oral and documentary evidence on record produced by respondent No.1, passed the impugned *ex parte* award holding that the workman is entitled to be reinstated with continuity of service and back wages.

However, in the absence of any relief of back wages sought by

respondent No.1, the Labour Court ought not to have granted back wages. Therefore, the relief of back wages granted by the Labour Court, is liable to be set aside. The law is well settled that backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey**[1]). In that view of the matter, the award of the Labour Court, insofar as granting back wages to respondent No.1 is concerned is liable to be set aside.

Accordingly, the writ petition is disposed of confirming the award of the Labour Court to the extent of reinstatement of respondent No.1 only, while the part of the award of the Labour Court, which directed payment of back wages is set aside. No costs.

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N.V. RAMANA, J.

Dated: 26-10-2006
Ksr/Rns

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[1] (2006) 1 SCC 479